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Attorneys for Defendants
ALEX CAINE; CITY OF SAN PABLO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTIAN J. BRACKO,)	Case No.: 3:08-cv-00239-JL
)	
Plaintiff,)	JOINT CASE MANAGEMENT STATEMENT
)	
vs.)	
)	
ALEX CAINE; CITY OF SAN PABLO,)	
)	
CA; and DOES 1-10, inclusive,)	
)	
Defendants.)	

1. Jurisdiction and Service

The court has original and supplemental jurisdiction over the case. No issues exist regarding personal jurisdiction or venue. All parties have been served.

1 **2. Facts**

2 On November 27, 2006, San Pablo Police Officer Brady made a
3 traffic stop on the plaintiff. The plaintiff fled by car and
4 then on foot. Police Officer Brady caught the plaintiff and
5 grabbed him. The plaintiff tried to pull away from Police
6 Officer Brady. Police Officer Brady wrestled the plaintiff down
7 and onto his stomach.

8 The plaintiff claims he stopped resisting arrest; Police
9 Officer Brady handcuffed him; and he laid peaceably on the
10 ground. Then San Pablo Police Officer Alex Caine ran from
11 around the corner and jumped on the plaintiff's head with his
12 knee.

13 The defendants claim that Plaintiff violently struggled and
14 fought with Officer Brady until Police Officer Caine was able to
15 assist Officer Brady in controlling and handcuffing the
16 resistive and violent Plaintiff. A significant amount of
17 marijuana associated with Plaintiff was found following
18 Plaintiff's arrest.

19 In subsequent criminal proceedings, the plaintiff pled
20 guilty to resisting arrest in violation of Penal Code §
21 148(a)(1).

22 **3. Legal Issues**

23 A. Whether the Defendants' Violated Plaintiff's 4th Amendment
24 Rights.

25 B. Whether the Plaintiff's Excessive Force Claim is Heck-
26 Barred Because He Pled Guilty to Resisting Arrest.

27 The plaintiff's position is that his claim is not *Heck-*
28 barred because Police Officer Caine used excessive force on him

1 after he stopped resisting arrest. *Smith v. City of Hemet*, 349
2 F.3d 689, 696 (9th Cir. 2005) ("[E]xcessive force used after a
3 defendant has been arrested may properly be the subject of a §
4 1983 action notwithstanding the defendant's conviction on a
5 charge of resisting an arrest that was itself lawfully
6 conducted.") Moreover, even if the plaintiff was trying to get
7 back up, jumping on the plaintiff's head with a knee was
8 unreasonable.

9 The defendants' position is that Plaintiff's conviction for
10 resisting arrest may offer a basis to bar Plaintiff's § 1983
11 claim for a violation of the 4th Amendment during his arrest.

12 C. Whether the Plaintiff's State Law Claims Are Barred by the
13 CA Torts Claims Act.

14 The plaintiff's position is that the Act does not apply.
15 According to California Government Code Section 950.2, the Act
16 only applies to "a cause of action against a public employee or
17 former public employee for injury resulting from an act or
18 omission in the scope of his employment as a public employee."
19 Police Officer Caine acted outside the scope of his employment
20 when he jumped on the plaintiff's head with his knee.
21 "Unconstitutional acts are not within a government agent's
22 express or implied powers because the government has no power to
23 confer on its agent the authority to act unconstitutionally."
24 *Golden Day Schools, Inc. v. Pirillo*, 118 F.Supp.2d 1037, 1048.

25 The defendants' position is that all of Plaintiff's state
26 law claims are time barred as Plaintiff failed to comply with
27 the California Tort Claims Act per Government Code § 800 et seq.
28 Plaintiff cannot get around the mandatory claim presentation

requirements via artful arguments. This will be the subject of a motion to dismiss these state law claims.

4. Motions

All parties anticipate filing motions in limine. The defendants anticipate filing a motion to dismiss for failure to state a claim and summary judgment.

5. Amendment of Pleadings

After the defendants produce the police report authored by Police Officer Brady, the plaintiff may amend his complaint to include a cause of action for conspiracy to cover up civil rights violations against Police Officers Caine and Brady. Defendants contend that no further state law claims can be brought as they are barred per Government Code § 800 et seq.

6. Evidence Preservation

The parties mutually agree to preserve all potentially relevant evidence.

7. Disclosures

The parties shall exchange initial disclosures by April 16, 2008.

8. Discovery

No discovery has been taken thus far.

The plaintiff anticipates taking discovery on Police Officer Caine's training, job performance, prior use of force, racial bias, and disciplinary history and the overall department's prior use of force, racial bias, and disciplinary history.

The defendants will take the deposition of the Plaintiff, any percipient witnesses identified in discovery, as well as

propound written discovery on Plaintiff. Other discovery, unknown at this time, may also be necessary.

9. Class Actions

N/A

10. Related Cases

N/A

11. Relief

Plaintiff seeks the following relief in this case:

Damages	Amount
Pain and suffering	\$125,000.00
Emotional distress	\$25,000.00
Medical expenses	\$5,000.00
Civil penalties	\$100,000.00
Punitive damages	\$2,500,000.00

12. Settlement and ADR

The parties have agreed to participate in an ENE (Early Neutral Evaluation) in this matter, which will occur by July 3, 2008. Some discovery needs to occur between the parties prior to the ENE.

13. Consent to Magistrate Judge for All Purposes

The parties consent to Chief Magistrate Judge James Larson only.

14. Other References

The case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The parties stipulate to the following facts:

1. On November 27, 2006, San Pablo Police Officer Brady made a traffic stop of a vehicle being driven by the plaintiff.
2. The plaintiff then fled from Police Officer Brady by car and then later on foot.

16. Expedited Schedule

This case cannot be handled on an expedited basis.

17. Scheduling

The parties propose the following schedule in this matter:

Event	Proposed Deadline
Deadline to add additional parties/claims without leave	June 16, 2008
Deadline to Complete ADR	July 3, 2008
Date of Next Case Management Conference	August 27, 2008
Completion of non-expert discovery	November 21, 2008
Expert Disclosure Deadline	December 2, 2008
Rebuttal Expert Disclosure Deadline	December 16, 2008
Completion of Expert Discovery	January 16, 2009
Last Day to Hear Dispositive motions	February 6, 2009
File Pre-Trial Conference Statements	March 2, 2009
Pre-Trial Conference (subject	March 9, 2009

1	to Court's availability)	
2	Trial Date (subject to	March 23, 2009
3	Court's availability)	
4		

5 **18. Trial**

6 The case will be tried to a jury. Trial is estimated to
7 take 5-8 days.

8 **19. Disclosure of Non-Party Interested Entities or Persons**

9 The plaintiff has filed the Certification of Interested
10 Entities or Persons and is unaware of any non-parties whose
11 interests could be substantially affected by the outcome of the
12 proceeding. Defendants concur.

13 **20. Other Matters**

14 There does not appear to be any other matters
15 needing discussion at this point.

17 Dated: April 16, 2008

Respectfully Submitted,

18 /s/ Mister Phillips
19 Mister Phillips
20 Attorney for Plaintiff
Christian J. Bracko

21 Dated: April 16, 2008

Respectfully Submitted,

22 MCNAMARA, DODGE, NEY,
23 BEATTY, SLATTERY,
24 PFALZER, BORGES &
BROTHERS LLP

25 By: /s/ Noah Blechman
26 James V. Fitzgerald, III
27 Noah G. Blechman
28 Attorneys for Defendants
ALEX CAINE;
CITY OF SAN PABLO